

Safeguarding an Archeological Legacy

Preventing Site Looting on Private Land

Although challenging, there are ways to prevent looting of archeological sites on private land. Archeological sites on public and tribal lands are fairly well protected from looting by existing Federal laws, such as the Antiquities Act of 1906 and the Archaeological Resources Protection Act (ARPA), and by similar State laws. Archeological sites on private lands, however, receive much less protection from Federal, State, and local laws, and private landowners have considerable freedom to do what they want on their own land.

A private property owner can be either the strongest guardian against site looting or the primary threat to a site's continued existence. As land stewards, property owners can actively manage their own sites, invoking laws against trespass, theft, property damage, and other laws established to protect private real and personal property. Landowners may also, with a few exceptions, legally dig up archeological materials from their property and sell them to the highest bidder.

The primary laws against archeological site looting and vandalism — the Antiquities Act, ARPA, and their State equivalents — work by ensuring that site excavation is appropriately conducted under permit and by prosecuting those who don't have such permission. Unfortunately, these laws generally do not apply unless a site is looted, or if a property owner excavates a site on his/her land or has given permission for someone else to do so.

Private property owners, however, do not have as much freedom in the use and control of their land as is commonly believed.¹ Approximately 20 States have enacted burial laws to protect marked and/or unmarked burials and cemeteries on private land, although these laws tend to stress reburial following excavation rather than preserving the burials in place.² Through State and local exercise of police power for the general public health and welfare, private property rights are limited or controlled in a number of ways,

and these controls can help protect archeological sites.

There are a variety of legal and voluntary tools to help protect archeological sites. No single tool will be effective in all situations. Successful site protection results from applying a range of tools in various combinations depending upon circumstances. The following are just some of the tools that can be effective in preventing site looting.

Legal Tools

Land ownership. The strongest and surest way to protect an archeological site is through outright ownership and careful stewardship and management.

Land-use and development regulations. By exercising police authority through planning, zoning, subdivision, open space conservation, and other means, local communities establish archeological site protection as public policy and can control activities on private land.

Information Management Strategies

Information confidentiality. Restricting access to site information limits the number of people who know site locations. This strategy may not be totally effective, because the serious looter probably knows more about site location than do those charged with protection.

Sharing information. If you seek the assistance of others in protecting sites, site location information must be judiciously shared.

Accurate site inventories. Up-to-date inventories of known archeological sites or officially designated sites such as national, State, or local registers, can be linked to public policy statements about cultural resource protection in the local comprehensive plan, local ordinances, and/or State land use statutes. This information is critical in planning and making land-use decisions.

Program Strategies

Site management. Responsible site protection is achieved through a long-term management program that includes a site management plan, documentation, security, maintenance, monitoring, and appropriate research. Site pro-

tection does not need to be complicated or expensive to be effective.

Site stewardship. Volunteer site stewards help absentee landowners protect sites by regularly visiting protected sites and reporting on site condition.

Public education. Educating the general public, landowners, law enforcement officers, planners, building inspectors, zoning administrators, and others helps to build a stewardship ethic and increases understanding of archeological values and protection strategies.

Physical Tools

Fencing. Fences mark site boundaries, restrict or guide visitor access to a site, provide site security, and may deter the hobby looter, but they won't stop the hard-core looter.

Signs. Signs are effective in reducing looting by explaining site values, interpreting site history, providing legal notice of prohibited uses, and warning of penalties for violations, but they may not deter the hard-core looter, and should not be placed at inconspicuous or remote sites.

Camouflage. Disguising or burying an archeological site to make it less conspicuous and accessible is an effective site protection strategy.

Site maintenance. A well-maintained site shows that it is valued and visited, and is at reduced risk of looting.

Regular human presence. A site that receives regular and frequent visits through site monitoring or law-enforcement patrols deters looters and vandals who prefer the seclusion of a remote site.

Electronic surveillance. Heat sensors, motion detectors, sound monitors, and hidden still or video cameras alert law enforcement to unauthorized entry onto a site.

These are just a few of the many tools for protecting archeological sites on private lands. For more detailed information about these and other tools, please examine the sources and Websites shown in the box below.

Notes

- 1 Richard B. Cunningham, "Do a Landowner's Rights of Property Include Exploitation of Archaeological Resources?," in *Topics in Cultural Resource Law*, Donald Forsyth Craib, ed. (Washington, DC: Society for American Archaeology, 2000), 22.
- 2 Patty Gerstenblith, "Protection of Cultural Heritage Found on Private Land," *Topics in Cultural Resource Law*, 13.

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Other Sources

Craib, Donald Forsyth, ed. *Topics in Cultural Resource Law* (Washington, DC: Society for American Archaeology, 2000). Can be ordered online at <www.saa.org>.

Cushman, David W., ed., "The Power to Preserve: Public Archeology and Local Government," *CRM* 21, no. 10 (1998).

Ehrenhard, John E., ed. *Coping with Site Looting: Southeastern Perspectives* (Atlanta, GA: Interagency Archeological Services, National Park Service, 1990). Available online at <www.cr.nps.gov/seac/coping/index.htm>.

Florida Bureau of Archaeological Research. *Best Management Practices: An Owner's Guide to Protecting Archaeological Sites* (Tallahassee: Florida Department of State, Division of Historical Resources, Bureau of Archaeological Research, 2000). Available online at <<http://dhr.dos.state.fl.us/culturalmgmt/>> (go to the bottom of the Webpage for links).

Glowaski, Mary, Jim Miller, Brenda Swann, and Louis Tesar, *Archaeological Stabilization Guide: Case*

Studies in Stabilizing Archaeological Sites (Tallahassee: Florida Department of State, Division of Historical Resources, Bureau of Archaeological Research, 2000). Order online at <<http://dhr.dos.state.fl.us/culturalmgmt/stabilization.html>>.

National Clearinghouse for Archaeological Site Stabilization Website at <www.cr.nps.gov/seac/stabil-clearinghouse.htm>.

Ryan, Jan S., *Preventing Cultural Resources Destruction: Taking Action through Interpretation*, Revised Edition (Washington, DC: U.S. Department of the Interior, National Park Service, 1999). Order online at <www.cr.nps.gov/aad/order1.htm> or write Publications, Archeology and Ethnography Program, National Park Service, 1849 C Street NW-210NC, Washington, DC 20240.

Smith, George S. and John E. Ehrenhard, eds., *Protecting the Past* (Boca Raton, FL: CRC Press, Inc., 1991). Available online at <www.cr.nps.gov/seac/protectg.htm>.

Strategies for Protecting Archeological Sites on Private Lands Website at <www2.cr.nps.gov/pad/strategies>